

YAAKOV M. ROTH
Acting Assistant Attorney General
Civil Division
SARAH L. VUONG (CA Bar 258528)
Assistant Director
WILLIAM H. WEILAND (Mass. Bar 661433)
Senior Litigation Counsel
LAUREN BRYANT (NY Bar 5321880)
ANNA DICHTER (NJ Bar 304442019)
JEFFREY HARTMAN (WA Bar 49810)
CATHERINE ROSS (DC Bar 9007404)
AMANDA SAYLOR (FL Bar 1031480)
ERIC SNYDERMAN (VA Bar 99563)
Trial Attorneys
U.S. Department of Justice, Civil Division
Office of Immigration Litigation
General Litigation and Appeals Section
P.O. Box 868, Ben Franklin Station
Washington, DC 20044

Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NATIONAL TPS ALLIANCE, *et. al.*,

Plaintiff,

v.

KRISTI NOEM, in her official capacity as
Secretary of Homeland Security, *et. al.*,

Defendants.

Case No. 3:25-cv-1766-EMC

Judge: Hon. Edward M. Chen

RESPONSE IN OPPOSITION TO PLAINTIFFS'
NOTICE OF NON-COMPLIANCE

RESPONSE IN OPPOSITION TO PLAINTIFFS'
NOTICE OF NON-COMPLIANCE
No. 3:25-cv-1766-EMC

On May 2, 2025, this Court held “that a stay of discovery pending the interlocutory appeal is not warranted.” ECF No. 129 at 3. However, the Court noted that it “intend[ed] to circumscribe the scope of permissible discovery.” *Id.* Within this “circumscribed” discovery process, on May 9, 2025, the Court ordered the Defendants turn over certain documents by May 16, 2025, to search documents using the search terms proposed by Plaintiffs for twenty custodians, and produce those documents and a privilege log by May 19, 2025. ECF No. 135. Defendants produced the ordered-documents on May 16, 2025. On May 19, 2025, the Supreme Court, in an 8-1 decision, granted the government’s application for a stay of this Court’s March 31, 2025 Order “pending the disposition of the appeal in the United States Court of Appeals for the Ninth Circuit and disposition of a petition for a writ of certiorari.” *Noem v. Nat. TPS Alliance*, No. 24A1059 (S. Ct. May 19, 2025) (“Order”). This stay reversed the Court’s order granting the motion to postpone the Secretary of Homeland Security’s “decision to vacate the extension of the 2023 Designation and to terminate the 2023 Designation.” *Nat. TPS Alliance*, --- F.Supp.3d ----, 2025 WL 957677, at *47 (N.D. Cal. Mar. 31, 2025). In light of this stay, on May 19, 2025, Defendants filed a Motion to Reconsider the Court’s discovery ruling, indicating that they would produce the ordered discovery upon further order by the Court. ECF No. 141. The Court reaffirmed Defendants’ duty to comply with the discovery order and on May 19, Defendants produced additional documents.

After production, and upon discussion with Plaintiffs’ counsel, Defendants reviewed the document production in order to answer Plaintiffs’ questions. As a result, Defendants identified that the addition of data from custodians from USCIS Office of Policy and Strategy (“OP&S”) and Refugee, Asylum and International Operations Directorate (“RAIO”) after the initial data from DHS had been uploaded resulted in the system not properly batching 159 documents for agency review. Defendants immediately notified Plaintiffs of this issue, and, in recognition of the compressed timeline, proposed a revised briefing schedule that provided Plaintiffs additional time to file their proposed Motion for Summary Judgment, but kept the overall schedule for the Court’s hearing of that motion intact. *See* ECF No. 147-1, at 5. Those additional documents have been processed for review and will be provided to Plaintiffs on May 27. In addition, Defendants have pulled data from two additional custodians identified by Plaintiffs subsequent to the

1 production, specifically DHS Office of General Counsel attorneys and will produce those documents as
2 soon as possible.

3 Defendants have worked diligently to comply with the Court's order. However, with the
4 accelerated timeline, Defendants have faced challenges in capturing the entire domain of documents. As
5 stated in the declaration from Kevin Marbray, Network Operations Security Branch Data Acquisition
6 Manager within the Office of the Chief Information Officer (OCIO), Defendants began collecting data on
7 May 12.¹ Ex. 1 at 2. A run of the search terms within the date ranges ordered by the Court retrieved
8 approximately 175 MB of data ("the May 12th Data Pull") from the following custodians: Corey
9 Lewandowski, James Percival, Joseph Guy, Joseph Mazzara, Kristi Noem, Robert Law, Tony Pham,
10 Troup Hemenway, and Troy Edgar.² *Id.* This data was uploaded to a designated DHS server and
11 transferred the data to the Department of Justice ("DOJ") via the Justice Enterprise File Sharing ("JEFS")
12 system on May 12. In response to Plaintiffs motion, on May 24, 2025, DHS asked their OCIO personnel
13 to reverify that the searches for *National TPS Alliance v. Noem* were run correctly. As a result, DHS OCIO
14 discovered that during the time of the May 12th Data Pull, the search tool, Office O365 Purview Standard,
15 was experiencing serious systematic issues, and identified the following errors in the May 12th Data Pull:

- 16 a. Mr. Benjamine C. Huffman's data was not actually pulled as a custodian;
- 17 b. The use of "or" rather than "OR" as search operators erroneously resulted in zero hits for
18 the MS Teams chat search for the Haiti Search Term; and
- 19 c. The use of "or" rather than "OR" as search operators erroneously resulted in zero hits for
20 the Calendar and OneDrive search for the Haiti Search Term.

21 Understanding this system issue, over Memorial Day weekend DHS reran the ordered search terms
22 using the upper case "OR" connector, resulting in the retrieval of cumulative information. That
23
24

25 ¹ The May 9 Discovery Order issued on Friday at 7:47 p.m. EST (4:47 p.m. PST).

26 ² Type of Data searched: Email, Emails with more than 15 recipients, Emails from non-
27 government domains, Calendar Data, Shared Calendars, OneDrive Folder, Files greater than 5 MB,
28 Version Folders, Teams Chats.

1 information is being processed for review and responsive non-privileged documents not already produced
2 will be provided to Plaintiffs as soon as possible.

3 Rather than reflect non-compliance with the Court's order, the exhibits demonstrate that
4 Defendants continue to work diligently to resolve the discovery issues raised by Plaintiffs, such that further
5 intervention by this Court remains unnecessary.

6 Dated: May 27, 2025

Respectfully submitted,

7
8 YAAKOV M. ROTH
Acting Assistant Attorney General
9 Civil Division

10 SARAH L. VUONG
Assistant Director (CA Bar 258528)

11
12 CATHERINE ROSS (DC Bar 9007404)
ERIC SNYDERMAN (VA Bar 99563)
13 ANNA DICHTER (NJ Bar 304442019)
LAUREN BRYANT (NY Bar 5321880)
14 JEFFREY HARTMAN (WSBA 49810)
AMANDA SAYLOR (FL Bar 1031480)
15 Trial Attorneys

16 /s/ William H. Weiland
17 WILLIAM H. WEILAND (Mass. Bar 661433)
Senior Litigation Counsel
18 U.S. Department of Justice, Civil Division
Office of Immigration Litigation
19 General Litigation and Appeals Section
P.O. Box 868, Ben Franklin Station
20 Washington, DC 20044
Tel: (202) 305-0770
21 william.h.weiland@usdoj.gov

22 *Attorneys for the Defendants*
23
24
25
26
27

28 RESPONSE IN OPPOSITION TO PLAINTIFFS'
NOTICE OF NON-COMPLIANCE
No. 3:25-cv-1766-EMC